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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/955,594	09/05/2001	Phillip M. Ginsberg	01-1047	1177
63710 7590 02/04/2009 DEAN P. ALDERUCCI CANTOR FITZGERALD, L.P. 110 EAST 59TH STREET (6TH FLOOR) NEW YORK, NY 10022				
EXAMINER GREENE, DANIEL LAWSON				
ART UNIT 3694		PAPER NUMBER		
MAIL DATE 02/04/2009		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/955,594

Applicant(s)

GINSBERG, PHILLIP M.

Examiner

DANIEL L. GREENE

Art Unit

3694

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2, 4, 6-33 is/are pending in the application.
- 4a) Of the above claim(s) 8, 11, 12, 21 and 30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2, 4, 6, 7, 9, 10, 13-20, 22-29 and 31-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

1. Claims 2, 4 and 6-33 are pending, Claims 8, 11, 12, 21 and 30 are withdrawn. Accordingly an action on the merits of Claims 2, 4, 6, 7, 9, 10, 13-20, 22-29 and 31-33 follows. Applicant's response received 11/12/2008 is acknowledged. Said response is directed towards the previous Non-Final Office action mailed 8/15/2007, as well as the Notice of Non-Compliance mailed 5/12/2008.

Response to Arguments

EXAMINERS NOTE: It is noted that counsel for applicant has changed as the instant response is signed by Mr. Mark Miller and Mr. Miller previously telephoned the Examiner to discuss the status of the application. The Examiner looks forward to working with Mr. Miller to further the prosecution of the instant application.

2. **NEW MATTER:** Per Applicant's request found on page 8, section V of said 11/2/2008 response, the Examiner is acknowledging that the alleged new matter issue is resolved and hereby withdrawn as Applicant has failed to maintain the election set forth in section II page 8 of the previous response received 1/29/2007.

3. **Claim rejections 35 U.S.C. 101: Applicant's arguments have been fully considered but they are not persuasive.**

Applicant argues on page 9 section VI:

"Since the section 101 issue raised in the office communication of August 15, 2007 is not maintained in the Office action, Applicants believe that any such rejections have been withdrawn. Applicants request a notice to that effect....

... In the prior § 101 rejections, there is no identification of any "law of nature, natural phenomenon, or abstract idea" or discussion of a "practical application." Therefore, the prior rejections were improper."

Response:

As stated in the rejection set forth in section 5 of the previous Office action mailed 8/15/2007

"Claims 25-32 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter."
Per MPEP 2105

"If the broadest reasonable interpretation of the claimed invention as a whole encompasses a human being, then a rejection under 35 U.S.C. 101 must be made indicating that the claimed invention is directed to nonstatutory subject matter."

Accordingly said rejection is sustained and incorporated herein by reference.

4. VII. Claim Rejections - 35 U.S.C. § 102:

Applicant argues on page 9:

"The Office Action discussed claims 2, 4, 6, 7, 9, 10, 13-20, 22-29, and 31-33 under 35 U.S.C. § 102(b) as being allegedly unpatentable over cited sections of Great Britain patent No. GB 2,352,844 to Beuttell (hereinafter "Beuttell"). Applicants respectfully traverse these rejections and request reconsideration.

Independent claim 2 recites, in part, "distributing at least a portion of profits earned because of the deviation of the price of the outlier-price trade from the benchmark price, to at least one second distributee participant of the plurality of distributee participants in the market for the traded instrument or item." Beuttell does not teach or suggest such a limitation.

Response:

It appears applicant is of the opinion that the only limitation Beuttell fails to disclose is:

"distributing at least a portion of profits earned because of the deviation of the price of the outlier-price trade from the benchmark price, to at least one second distributee participant of the plurality of distributee participants in the market for the traded instrument or item."

Claim 25 recites;

"receiving notification from the electronic trading platform of a redistribution of at least a portion of profits attributable to the deviation either to the trader from other traders in the market, or from the trader to other traders, the amount of the redistribution being based at least in part on the deviation of the price of the outlier-price trade from the benchmark price."

Beuttell discloses a system that tracks the price movement of a commodity including price fluctuations and outliers. The process of distributing profits is considered to be what happens when a trader working for a trading firm enters a trade order that is accepted. That is, the trading FIRM receives the profits (and losses) from ALL of its employees (i.e. Traders) and distributes at least a portion of said profit in the form of a paycheck, a bonus or some other fashion. This is also known in the art as a commission.

commission • noun 1 an instruction, command, or duty. **2** an order for something to be produced specially. **3** a group of people given official authority to do something. **4** a sum paid to an agent in a commercial transaction.

5. VIII. Claim Rejections - 35 U.S.C. § 103

Applicant argues:

"The Office Action rejected claims 2, 4, 6, 7, 9, 10, 13-20, 22-29, and 31-33 under 35 U.S.C. § 103(a) as being allegedly unpatentable over cited sections of The Clayton Antitrust Act of 1914 (hereinafter "CAA") in view of both cited sections of Energy and Electric Utilities State Laws and Regulations: Price Gouging (hereinafter "State Laws") and cited sections of Caffrey, "States try to

deter power price gouging" (hereinafter "Caffrey"). Applicants respectfully traverse these rejections and request reconsideration.

Amended independent claim 2 recites, in part, "distributing at least a portion of profits earned because of the deviation of the price of the outlier-price trade from the benchmark price, to at least one second distributee participant of the plurality of distributee participants in the market for the traded instrument or item." The combination of CAA, State Laws, and Caffrey does not teach or suggest such a limitation."

Response:

Applicant's arguments are unpersuasive as applicant has not shown that the references do not teach what the examiner has stated they teach, nor has applicant shown that the examiner's reasoning for and manner of combining the teachings of the references is improper or invalid.

Again, applicant's invention is considered as the APPLICATION of the price gouging laws. A price gouger once caught, and convicted will be fined. That fine can be considered "a portion of the profits" and the fine itself is the distribution to the at least one second participant.

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

- 7. Claims 2, 4, 6, 7, 9, 10, 13-20, 22-29 and 31-33 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

The claimed invention is not tied to a particular machine or apparatus and does not transform a particular article to a different state or thing.

See *In re Bilski*, 545 F.3d 943, 88 USPQ2d 1385 (Fed. Cir 2008)

Applicant's invention appears to be nothing more than insignificant extra-solution activity which has been, up to this point, performed manually by hand.

It appears that even applicant is of the opinion that the invention does not require an electronic trading platform as evidenced by the reproduction of page 5 lines 9-20 below.

10 ... e.g., one minute, one hour, one day, one week, one month etc. It is most preferred that this system be implemented in an electronic trading platform. Nevertheless, the systems and methods of the invention do not necessarily require an electronic trading platform.

15 It should be noted that the benchmark value, or range of values, may preferably be computed according to any suitable statistical method -- e.g., average, weighted average, median, mode or any suitable metric method. These methods and systems preferably reduce dislocation created by outlying trades and other phenomena that result in trading price spikes.

20 In another example according to the invention, the trading price of electricity for an entire day may spike because of high temperatures occurring during the

8. Claims 25-32 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 25-32 still claim a person. See the discussion of this topic in section 4 above.

Claim Rejections - 35 USC § 102

9. **Claims 2, 4, 6, 7, 9-, 10, 13-20, 22-29 and 31-33 are rejected under 35 U.S.C. 102(b) as being anticipated by GB 2,352,844,A to Beuttell for the reasons set forth in section 5 of the previous office action mailed 8/15/2007.**

See the explanation set forth in section 5 above.

Claim Rejections - 35 USC § 103

10. **Claims 2, 4, 6, 7, 9, 10, 13-20, 22-29 and 31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over The Clayton Antitrust Act of 1914 (hereafter CAA) in view of Both Energy and Electric Utilities State laws and regulations: price gouging AND Caffrey, "States try to deter power price gouging" 4/30/2001 for the reasons set forth in section 7 of the previous office action mailed 8/15/2007.**

See the explanation set forth in section 6 above.

Conclusion

11. Applicant's amendments to the claims dated 9/21/2007 necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

12. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL L. GREENE whose telephone number is (571)272-6876. The examiner can normally be reached on Mon-Thur.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James P. Trammell can be reached on (571) 272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. L. G./
Examiner, Art Unit 3694
20090202

/James P Trammell/
Supervisory Patent Examiner, Art Unit 3694